

SANDRA D. FRELIX, ESQ.
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NEW YORK, NEW YORK 10005
212-859-3509
212-862-8212 FAX

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Maria Jackson	Sandra Frelix, Esq.
COMPANY:	DATE: 7 August 6, 2008
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
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PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
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☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Mrs. Jackson: Attached please find the 7/30/08 electronic notice and July 29, 2008 Order from Judge Kaplan and the July 3, 2008 electronic notice and July 3, 2008 Order. Thank you, Sandra Frelix

Subj: **Activity in Case 1:08-cv-01064-LAK Jackson v.The Scotts Company Order**
Date: 7/30/2008 9:30:59 AM Eastern Standard Time
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U.S. District Court

United States District Court for the Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 7/30/2008 at 9:29 AM EDT and filed on 7/29/2008

Case Name: Jackson v.The Scotts Company

Case Number: 1:08-cv-1064

Filer:

Document Number: 71

Docket Text:

ORDER, Ms. Frelix is hereby directed to furnish her client with copies of the entire 7/3/08 order and of this order on or before 8/7/08 and to file, on or before 8/14/08, a declaration or affidavit of service establishing that she has done so. (Signed by Judge Lewis A. Kaplan on 7/29/08) (cd)

1:08-cv-1064 Notice has been electronically mailed to:

Sandra D. Frelix sfrelx@aol.com

Craig Friedman csfriedman@jonesday.com, dpjacobson@jonesday.com

1:08-cv-1064 Notice has been delivered by other means to:

Matthew Willis Lampe
Jones Day, Reavis & Pogue - 2
222 East 41st St.
New York, NY 10017

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=7/30/2008] [FileNumber=4855836-0]
] [9093f79d5fd581ceb656a667f203e1eae8a78de7f430e79c8cb07f79b62edaeeef0
ca35c1591144c2ef5d20caa7bf3e84b552198ec35f1fcca28721b854524f8]]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
MARIA JACKSON,

Plaintiff,

-against-

08 Civ. 1064 (LAK)

THE SCOTTS COMPANY,

Defendant.
----- x

ORDER

LEWIS A. KAPLAN, *District Judge*.

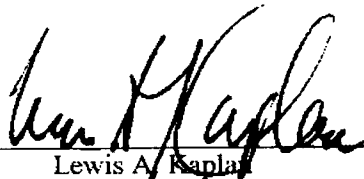
Plaintiff's attorney, Sandra D. Frelix, Esq., has been sanctioned three times in this action, by orders dated March 5, 2008, May 14, 2008 and July 3, 2008. Concerned that her client was unaware of the nature of the representation the client is receiving, the July 3, 2008 order, which perhaps was the most critical of Ms. Frelix of the three, directed Ms. Frelix "to furnish to her client copies of this order and the Court's previous orders sanctioning her and to file proof thereof on or before July 21, 2008."

By letter dated July 21, 2008, Ms. Frelix, in purported compliance with the foregoing, wrote to the Court, enclosing what purports to be a memorandum to her client. The memorandum in turn purported to enclose "the July 3, 2008 Order, the May 14, 2008 Memorandum and Order and the March 5, 2008 Order." While it appears from the attachments to the memorandum that Ms. Frelix sent her client copies of the March 5 and May 14 orders, the third enclosure was not the July 3 order. Rather, it was a copy of the docket entry for that order printed off the ECF system. Thus, she sent a summary version of the Court's comments on her performance rather than the full order.

Ms. Frelix is hereby directed to furnish her client with copies of the entire July 3, 2008 order and of this order on or before August 7, 2008 and to file, on or before August 14, 2008, a declaration or affidavit of service establishing that she has done so.

SO ORDERED.

Dated: July 29, 2008



Lewis A. Kaplan
United States District Judge

Subj: **Activity in Case 1:08-cv-01064-LAK Jackson v.The Scotts Company Order on Motion for Sanctions**
Date: 7/3/2008 12:50:17 PM Eastern Standard Time
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U.S. District Court

United States District Court for the Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 7/3/2008 at 12:48 PM EDT and filed on 7/3/2008

Case Name: Jackson v.The Scotts Company

Case Number: 1:08-cv-1064

Filer:

Document Number: 56

Docket Text:

ORDER granting in part and denying in part [46] Motion for Sanctions. In all circumstances, defendant's motion [DI 46] is granted to the extent that (1) defendant shall recover of Ms. Frelix, pursuant to 28 U.S.C. 1927, the costs, expenses, and reasonable attorney's fees incurred by it in consequence of Ms. Frelix's repeated vexations and unreasonable actions, and (2) Ms. Frelix is directed to furnish to her client copies of this order and the Court's previous orders sanctioning her to file and proof thereof on or before 7/21/2008. It is denied in all other respects, the denial being without prejudice insofar as it seeks sanctions against Ms. Frelix pursuant to the inherent power of the Court should the sanctions imposed pursuant to 28 U.S.C. 1927 prove inadequate. Defendant may move within 14 days to fix the amount of the sanction to be imposed pursuant to this order. SO ORDERED. (Signed by Judge Lewis A. Kaplan on 7/3/2008) (tve)

1:08-cv-1064 Notice has been electronically mailed to:

Sandra D. Frelix sfrelix@aol.com

Craig Friedman csfriedman@jonesday.com, dpjacobson@jonesday.com

1:08-cv-1064 Notice has been delivered by other means to:

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Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=7/3/2008] [FileNumber=4770917-0]
[8695988746d449ea3c8f64a1e1392e69008c6db4556a00f68f7d9adc4d0bb9f139e2
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
MARIA JACKSON,

Plaintiff,

-against-

08 Civ. 1064 (LAK)

THE SCOTTS COMPANY,

Defendant.
----- x

ORDER

LEWIS A. KAPLAN, *District Judge.*

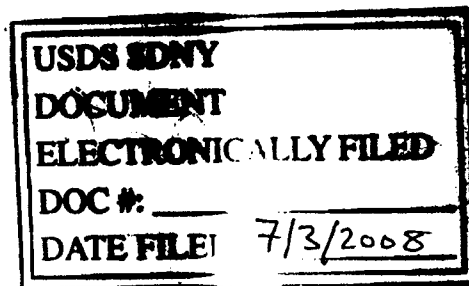
Defendant moves for sanctions, pursuant to the Court's inherent power, against both plaintiff and her counsel, Sandra D. Frelix, Esq., and, in addition, pursuant to 28 U.S.C. § 1927,¹ against Ms. Frelix. It seeks dismissal of the action and an order requiring plaintiff and Ms. Frelix to reimburse defendant for the costs, expenses, and reasonable attorney's fees incurred as a result of their vexatious and unreasonable multiplication of the proceedings. Plaintiff and her counsel, as has occurred previously, have failed to respond to the motion.

Ms. Frelix already has been sanctioned twice in this action for frivolous assertions, most notably her baseless contention that the New York Workers' Compensation Law (the "WCL") proscribes discrimination on the basis of race – a contention that she repeatedly has made, even after having been sanctioned for doing so, in a vain attempt to have this action remanded to the state court from which it was removed, where she doubtless feels more comfortable. *See* Tr., May 2, 2008, at 6. This motion is occasioned by more of the same.

In view of the default on the motion, it is unnecessary to say very much. As defendant argues, plaintiff's motion to amend and remand [DI 44] was entirely frivolous at least because it sought yet again to assert the claim of race discrimination based on the WCL and sought to reassert other causes of action that previously were dismissed by this Court. *See* Def. Mem. 9-12.

¹

Section 1927 provides that "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."



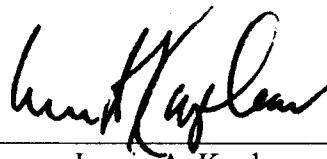
This and prior motions for leave to amend plainly were filed in bad faith – indeed, although the Court previously avoided determining whether Ms. Frelix acted in bad faith, it is compelled in all the circumstances to the conclusion that she has acted in bad faith throughout this action. She has evidenced an unsettling willingness to say or do whatever she perceives might advance her goal of getting this case back to Bronx County Supreme Court without regard to case law or prior rulings of this Court. In view of Ms. Frelix's bad faith, which the Court finds is both objective and subjective, and unreasonable conduct and the fact that it has been undertaken for the improper purpose of obtaining a remand to which she is not entitled, sanctions under Section 1927 are appropriate.² See, e.g., *Revson v. Cinque & Cinque, P.C.*, 221 F.3d 71, 78-80 (2d Cir. 2000). Moreover, as defendant has pointed out, this is not the first court to sanction her.

The question of dismissal or other sanctions upon plaintiff is another matter. Defendant has failed even to attempt to demonstrate that plaintiff is responsible in any way for Ms. Frelix's behavior.

In all the circumstances, defendant's motion [DI 46] is granted to the extent that (1) defendant shall recover of Ms. Frelix, pursuant to 28 U.S.C. § 1927, the costs, expenses, and reasonable attorney's fees incurred by it in consequence of Ms. Frelix's repeated vexatious and unreasonable actions, and (2) Ms. Frelix is directed to furnish to her client copies of this order and the Court's previous orders sanctioning her and to file proof thereof on or before July 21, 2008. It is denied in all other respects, the denial being without prejudice insofar as it seeks sanctions against Ms. Frelix pursuant to the inherent power of the Court should the sanctions imposed pursuant to 28 U.S.C. § 1927 prove inadequate. Defendant may move within 14 days to fix the amount of the sanction to be imposed pursuant to this order.

SO ORDERED.

Dated: July 3, 2008



Lewis A. Kaplan
United States District Judge

Craig S. Friedman (CF-1988)
Matthew W. Lampe (*pro hac vice*)
JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939
Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA JACKSON,

Plaintiff,

-against-

THE SCOTTS COMPANY

Defendant.

08 Civ. 1064 (LAK)

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed Declaration of Craig S. Friedman, dated June 4, 2008, together with the exhibits thereto, and the accompanying memorandum of law, Defendant The Scotts Company LLC (incorrectly named in the Complaint as “The Scotts Company”) will move this Court, before the Honorable Lewis A. Kaplan, United States District Judge, United States Courthouse, 500 Pearl Street, New York 10007, pursuant to 28 U.S.C. § 1927 for sanctions against Plaintiff’s counsel, Sandra Frelix, Esq., and pursuant to the Court’s inherent power for sanctions against Plaintiff and Ms. Frelix.

Dated: June 4, 2008

JONES DAY

/s/ Craig S. Friedman

Craig S. Friedman (CF-1988)
Matthew W. Lampe (*pro hac vice*)
222 East 41st Street
New York, New York 10017
(212) 326-3939
Attorneys for Defendant

TO: Sandra Frelix, Esq.
110 Wall Street, 11th Floor
New York, New York 10005

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing NOTICE OF MOTION, attached DECLARATION OF CRAIG S. FRIEDMAN, and the exhibits thereto, to be served on the following counsel of record this 4th day of June, 2008 by forwarding a copy, by First Class Mail, addressed to:

Sandra D. Frelix, Esq.
110 Wall Street, 11th Floor
New York, New York 10005
(212) 859-3509

/s/ Craig S. Friedman

Craig S. Friedman

TRANSMISSION VERIFICATION REPORT

TIME : 08/07/2008 09:00
NAME : S. FRELIX
FAX : 2128628212
SER.# : BROA6F772830

DATE, TIME	08/07 08:58
FAX NO./NAME	17184817277
DURATION	00:01:52
PAGE(S)	10
RESULT	OK
MODE	STANDARD
	ECM

TRANSMISSION VERIFICATION REPORT

TIME : 08/07/2008 09:13
NAME : S. FRELIX
FAX : 2128628212
SER.# : BROA6F772830

DATE, TIME	08/07 09:11
FAX NO./NAME	17184817277
DURATION	00:01:21
PAGE(S)	10
RESULT	OK
MODE	STANDARD
	ECM

CERTIFICATE OF SERVICE

I hereby certify that I have caused true and correct copies of the foregoing 7/3/08 and 7/30/08 electronic notices, Judge Kaplan's 7/3/08 and 7/29/08 Orders as well as defendant's 6/4/04 Notice of Motion to be served on Plaintiff Maria Jackson on August 6, 2008 via her personal fax machine.

/s/ Sandra D. Frelix

Sandra D. Frelix